

1 is what we have identified as Rick deposition
2 exhibit four?

3 A. That's correct, what I have in front of
4 me, affidavit of Edward Rick, III. That's the
5 result of our discussion.

6 Q. I'm talking about the document dated
7 April 15, 1993.

8 MR. EMMONS: Mr. Cohen, you better
9 identify it by deposition number.

10 MR. COHEN: Rick deposition exhibit
11 four is what I said. At least I thought I did.

12 THE WITNESS: Right. I don't have a
13 number on this.

14 BY MR. COHEN:

15 Q. Let me help you so you won't be
16 confused. Why don't you write on there so you and
17 I will be talking about the same thing? Why don't
18 you write on there Rick deposition exhibit four?

19 And so you had a conversation with Mr.
20 Holt which resulted in Rick deposition exhibit
21 four?

22 A. Yes, sir.

23 Q. Okay, how long was that conversation?

24 A. Twenty minutes, twenty-five minutes. I
25 don't remember exactly, sir.

1 Q. And who were the parties to that
2 conversation?

3 A. Just Mr. Holt and myself.

4 Q. No one else?

5 A. No one.

6 Q. Did Mr. Holt record the information he
7 was getting from you on a tape recorder? Did he
8 take notes? Did he tell you what he was doing?

9 A. I don't recall, sir.

10 Q. And did you have one or more than one
11 conversation with Mr. Holt before you received Rick
12 deposition exhibit four?

13 A. More than one.

14 Q. How many?

15 A. I would say three or four.

16 Q. You had three or four before you got
17 any drafts? Is that what you are saying? Before
18 you received -- Strike that.

19 Is Rick deposition exhibit four the
20 first draft that you received? It states here:
21 Enclosed is a red-lined draft.

22 A. No, sir.

23 Q. There was an earlier draft?

24 A. I think so. Yes, sir.

25 Q. Did you bring it with you?

1 A. Everything was in there that I had.

2 Q. In other words, you don't have that
3 draft any longer?

4 A. I believe it's in there, isn't it? I
5 don't know.

6 Q. Believe me, I have no motive or
7 interest in trying to confuse you.

8 A. No, I understand. I brought
9 everything -- everything that was in my file that I
10 received from Mr. Holt.

11 Q. I'm not arguing with you at all. Life
12 is too short to argue.

13 This is what you gave me. The first
14 one, Rick deposition exhibit four, is dated April
15 15th, and Rick deposition exhibit five is dated
16 April 16th?

17 A. Well, I would say probably 15 is the
18 first one, and 16 is the second one.

19 Q. So my question again is: How many
20 drafts -- and think hard before you answer this.
21 How many drafts did you have before you signed the
22 document?

23 A. I'd say probably two. I don't recall.
24 There are two here, and then I signed.

25 Q. Do you recall at least two?

1 A. Yes, sir.

2 Q. Now, the documents that you brought
3 here today were in the file, I take it.

4 A. Yes, sir.

5 Q. And everything that you have that
6 relates to this matter, was everything in the file?

7 A. Yes, sir.

8 Q. Did you screen anything out of the
9 file?

10 A. No, sir.

11 Q. You brought the whole file?

12 A. Yes.

13 Q. Did you show anybody that file for
14 purposes of screening documents?

15 A. No, sir.

16 Q. So you brought the whole file here?

17 A. Yes, sir.

18 Q. And you have given me the whole file?

19 A. Yes, sir.

20 Q. Well, there are only two drafts in
21 here, so can I assume then that there were only two
22 drafts?

23 A. Yes, sir.

24 Q. Okay. Now the instructions here were
25 to read the statement carefully and call me at your

1 earliest convenience to discuss whether there
2 should be any additions or modifications?

3 A. Uh-huh.

4 Q. And did you do that?

5 A. Yes, sir.

6 Q. And were there additions or
7 modifications? Are they set forth in Rick
8 deposition exhibit five?

9 A. To the best of my recollection, there
10 were some corrections or additions. Otherwise,
11 there probably wouldn't have been another
12 deposition (sic), but I don't recall exactly what
13 they were without studying the differences between
14 the two.

15 Q. Well, I have no interest in trying to
16 keep you here one minute longer than you need to
17 be, and I am trying to think of a way to do this so
18 that I can be quicker rather than slower.

19 The draft of Rick deposition exhibit
20 five is -- It states a red-line draft. And that
21 shows the changes I have made by running a line
22 through the text that has been deleted and by
23 shading the text that has been added.

24 My question is, and if you have to
25 review the document line by line, do it. The

1 basis -- Were the changes made because you
2 requested them to be made?

3 A. Yes, sir.

4 Q. And you requested them to be made for
5 what reason?

6 A. Because they were not exactly correct,
7 probably.

8 Q. Now, you say: Probably. Do you have a
9 recollection of this, or are you reconstructing?

10 A. I would say that they probably were
11 not -- They were not corrected, so I wanted them
12 changed.

13 Q. Do you know the difference between
14 reconstructing and recalling?

15 A. Really, no, sir.

16 Q. And I am saying this in a friendly way
17 to you.

18 A. Right.

19 Q. If you remember something, you remember
20 it. If you say I assume this was that way, then
21 you are reconstructing.

22 A. I remember that there were some
23 corrections necessary to be made to the existing
24 document, the one I had in my possession.

25 Q. Thus you made the -- You, obviously,

1 had a telephone conversation with Mr. Holt on the
2 15th. It states you did.

3 A. Yes, sir.

4 Q. Okay. So, apparently, you spoke with
5 him on April 15th after you received this first
6 draft?

7 A. Yes, sir.

8 Q. And during that telephone conversation,
9 you made corrections or changes, is that right?

10 A. Yes, sir.

11 Q. And that's what's set forth in Rick
12 deposition exhibit five? Is that the way it
13 worked?

14 A. Yes, sir.

15 Q. Were you told your affidavit, which was
16 eventually signed, was to be submitted to the
17 Federal Communications Commission?

18 A. Yes, sir.

19 Q. And what were you told about that?

20 A. That's about it.

21 Q. Were you given anything or paid
22 anything for your trouble?

23 A. No, sir.

24 Q. Have you been -- received any
25 compensation of any kind in connection with the

1 presentation of your affidavit?

2 A. No, sir.

3 Q. Not a penny?

4 A. No, sir.

5 Q. I may have asked you this before so I
6 apologize.

7 When did you first become aware that
8 Mr. Holt represented Trinity Broadcasting Company?

9 A. Quite honestly, sir, I really didn't --
10 to give an exact date, I don't know.

11 Q. Well, give me an approximate date.

12 A. I really couldn't begin to give you an
13 approximate date because I was not concerned about
14 who he represented. All I was concerned about was
15 the information that he wanted from me.

16 Q. I'm not debating the merits with you.
17 I'm just asking you the question.

18 Was it after -- Obviously, it must have
19 been after Mr. Holt called you?

20 A. He really couldn't have -- yes, sir.

21 Q. Was it on or about the time that he
22 first called you?

23 A. No, because at that time I really -- it
24 wouldn't have stuck in my mind because it didn't
25 pertain to me.

1 Q. Give me your best recollection as to
2 when you learned that?

3 A. I honestly couldn't give you a
4 recollection.

5 Q. Could it have been last week?

6 A. It could.

7 Q. Could it have been this morning?

8 A. No, it was earlier than that.

9 Q. It could have been last week?

10 A. Yes, sir.

11 Q. Has Ready Mixed Company ever done any
12 business with Trinity Broadcasting?

13 A. No, sir.

14 Q. Other than the subpoena fee that you
15 received to testify, have you or are you going to
16 receive any compensation from anybody in the world
17 for testifying today?

18 A. No, sir.

19 Q. Now, other than Mr. Holt, did anybody
20 in the world review or read your affidavit before
21 you signed it?

22 A. Not once it reached me. No, sir.

23 Q. When you said, after you received it --

24 A. We are talking about the two drafts?
25 I'm talking about the two drafts.

1 Q. I'm now talking about the final
2 document.
3 A. Yes, sir.
4 Q. After you received it, before you
5 signed it, did anybody in the world, other than you
6 and Mr. Holt, read that document?
7 A. No, sir.
8 Q. And you have already told me you
9 haven't used any other counsel for this purpose?
10 A. No, sir.
11 Q. I want to ask you about Rick deposition
12 exhibit three. What day was that document
13 prepared?
14 A. I don't have the document.
15 Q. Oh, I'm sorry.
16 A. Things didn't all come back my way.
17 Q. I want to make sure you get what you
18 came with.
19 Approximately when, I don't mean the
20 exact date, but approximately when was that
21 prepared?
22 The month and the year would be fine.
23 A. I can probably give you the year. The
24 year is 1993 because of one gentleman moving. As
25 far as the month, I have no idea.

1 Q. Can you give me the season? Was it the
2 winter? The fall? In the spring? Or the summer?
3 A. I would say it was probably the winter.
4 Q. How many employees, approximately, are
5 reflected on this?
6 A. Approximately thirty-six.
7 Q. Thirty-six. Is thirty-six -- Let me
8 bring you back to, well, say 1991. What was your
9 normal complement of employees then?
10 A. Probably about thirty-six.
11 Q. Are your employees classified by
12 category?
13 A. Yes, sir.
14 Q. Do you have categories such as
15 management?
16 A. We have categories such as truck
17 driver, yardman, and batch man.
18 Q. Do you have any management categories?
19 A. No, sir. Not as far as seniority is
20 concerned.
21 Q. Apart from seniority, I recognize this
22 as a seniority list, but I'm not talking about
23 seniority. I'm just talking about in terms of
24 general categories of employees. What are the
25 categories, not for purposes of seniority, of

1 employees?

2 A. Well, there is management. There is

3 me. And there is sales.

4 Q. Okay, let me just ask, you are the only

5 person in management?

6 A. No. There are two of us in management.

7 Q. You and who else?

8 A. The plant manager.

9 Q. The plant manager?

10 A. Yes, sir.

11 Q. What's that person's name?

12 A. Walter Hockensmith.

13 Q. And how long has he been the plant

14 manager?

15 A. He has been the plant manager since

16 1984.

17 Q. And do you have any administrative

18 staff to support the two of you?

19 A. Two.

20 Q. Two. One a secretary?

21 A. Yes, sir.

22 Q. Any other administrative support?

23 A. No.

24 Q. Do you have any other administrative

25 staff?

1 A. The office people, the one you
2 mentioned.

3 Q. The secretary is active in that
4 capacity?

5 A. Yes.

6 Q. And that's the total managerial number
7 of employees?

8 A. Yes, sir.

9 Q. Okay. And then you had sales, you say?

10 A. One person in sales.

11 Q. And does that person have -- Is he
12 supported or she supported by any staff?

13 A. No, sir.

14 Q. And what are the other categories?

15 A. Once you're out of the office, then
16 you're into the yardman, batch man, and truck
17 driver type.

18 Q. I see. Now, I understand according to
19 your declaration that you are the vice-president of
20 Ready Mixed Concrete Company?

21 A. That's correct.

22 Q. And how many vice-presidents are there?

23 A. There is two.

24 Q. Two. And what is the other
25 vice-president's name?

1 A. Barry Emmich.

2 Q. Does he have an office at Ready Mixed

3 Concrete Company?

4 A. No, sir.

5 Q. Does he devote time on a regular basis

6 to --

7 A. No, sir.

8 Q. Who is the president of Ready Mixed

9 Concrete Company?

10 A. Don Emmich.

11 Q. Does he have an office at the --

12 A. No, sir.

13 Q. Does he devote any time on a regular

14 basis?

15 A. No, sir.

16 Q. Are there any other officers of the

17 corporation?

18 A. Yes, sir.

19 Q. There are?

20 A. Yes, sir.

21 Q. And who are they?

22 A. The secretary is Lee Ober, and I think

23 he is secretary/treasurer, so that would be the

24 only other one.

25 Q. Does he have an office at the --

1 A. No, sir.

2 Q. Does he devote any time on a regular
3 basis?

4 A. No, sir.

5 Q. There are two owners, I take it,
6 according to your affidavit; is that correct?

7 A. There are -- Technically, there are
8 three families that own stock in Ready Mixed
9 Concrete Company.

10 Q. Three families?

11 A. Yes, sir.

12 Q. And your family is one of the three?

13 A. Yes, sir.

14 Q. And you're an employee of, I take it,
15 as an officer, you're an employee of the
16 corporation; am I right?

17 A. Yes, sir.

18 Q. Are you the only owner or member of the
19 owners' families that is an employee?

20 A. Yes, sir.

21 Q. And the other two owning families have
22 no employees?

23 A. No, sir.

24 Q. Are there any directors -- How many
25 directors are there of the corporation?

1 A. Let me see here. I believe seven, sir.

2 Q. And do any of those persons have

3 offices at Ready Mixed Concrete Company?

4 A. Only myself.

5 Q. What is your educational background,

6 sir?

7 A. Education is a high school graduate,

8 and I guess an accumulative three or four years of

9 college at different colleges.

10 Q. How many hours each week commencing in

11 1991 did you devote -- Well, 1991, how many hours

12 each week did you devote to the affairs of Ready

13 Mixed on an average?

14 A. On an average, hours a week, I would

15 say probably fifty-plus.

16 Q. What about 1992?

17 A. It would be the same.

18 Q. 1993?

19 A. The same.

20 Q. Has the number of hours varied in 1991?

21 A. Have the number of hours varied?

22 Q. Substantially. Varied substantially?

23 A. No. They are all about the same.

24 Q. The same for 1992?

25 A. Yes.

1 Q. The same for 1993?

2 A. Yes.

3 Q. I want to ask you some questions about
4 your affidavit.

5 A. Yes, sir.

6 Q. I'm now talking about the affidavit
7 that you signed, not the drafts. I have no
8 questions at this time about the drafts.

9 A. Okay.

10 Q. In paragraph four you state that you
11 received a visit from two individuals whose names I
12 do not recall. Do you see that?

13 A. That's correct.

14 Q. Did anyone telephone in advance to
15 arrange that visit?

16 A. To my knowledge and recollection, no,
17 sir.

18 Q. So you had two visitors?

19 A. Yes, sir.

20 Q. And these were visitors that you were
21 not expecting?

22 A. That's correct.

23 Q. What time of day did the visit occur,
24 approximately?

25 A. To the best of my recollection, I would

1 say it was early afternoon.

2 Q. Do you have any particular basis for
3 being able to recall that?

4 A. No, sir.

5 Q. You cannot recall the names of the
6 individuals?

7 A. No, I cannot.

8 Q. Can you recall their sex?

9 A. Two males.

10 Q. Two males. You took some notes of that
11 visit, didn't you?

12 A. I merely made -- Yes, I did.

13 Q. There are some notes reflected in
14 the --

15 A. One note, yes, sir.

16 Q. One note. And that's Exhibit D, I
17 believe, to your declaration, which is -- Do you
18 have that before you?

19 A. I have a copy of it. Yes, sir.

20 Q. Would you read that to me?

21 A. 10/16/91, had visit from new owner of
22 rights -- I can't make that out. Oh, want
23 dust-free area. No in parentheses. And then it
24 was filed. I made that note after they left.

25 Q. My note -- this is the original which

1 Mr. Shook was gracious enough to point out to me.
2 Is that the original of your note?
3 A. Yes, sir.
4 Q. And that says --
5 A. That says: Had visit from new owner of
6 rights.
7 Q. That says: Owner. It was singular?
8 A. Right. They were two gentlemen.
9 Q. And they told you they were together?
10 A. Yes, sir.
11 Q. And did they identify themselves?
12 A. They may have, sir. I don't know.
13 They did not give me a card. They identified
14 themselves as the new owner of the rights for the
15 TV tower.
16 Q. And you have that clearly in your mind?
17 A. Yes, sir.
18 Q. And they didn't tell you they were the
19 prospective owners?
20 A. No, sir.
21 Q. They told you they were the owners
22 then?
23 A. They told me they were the new owners.
24 Q. The new owners?
25 A. Yes, sir.

1 Q. I see. But they didn't tell you whom
2 they represented?

3 A. They may have, sir. I do not recall.

4 Q. And you didn't write it down?

5 A. No, sir, I did not.

6 Q. And you didn't get a card?

7 A. No, sir. They did not give me a card.
8 As we would go on, the way the conversation ended,
9 I did not feel it was necessary to know who it was.

10 Q. And I want your best recollection.
11 When they identified themselves they just said: We
12 are the new owners of what?

13 A. Of the rights.

14 Q. Of the rights?

15 A. Yes, of the rights. That I can
16 remember. For the TV tower for the top of the
17 plant.

18 Q. Now, did both of the persons speak to
19 you, or did one talk and one listen?

20 A. Both of them talked. There was -- This
21 sounds funny, but the gentleman -- When they came
22 in my office the gentleman that sat on the
23 left-hand side started the conversation about as he
24 was coming in the door: He was the new owner for
25 the rights.

1 And we sat down, and he held the first
2 part of the conversation. And the second part of
3 the conversation dealt with the dust situation.

4 And the gentleman on the right-hand
5 side contributed at that point.

6 Q. And is it your testimony that they did
7 identify themselves by name, but you can't recall
8 it?

9 A. I am assuming that they did. I don't
10 know, sir. I do not recall if they identified
11 themselves by name. Their names were not familiar
12 to me.

13 Q. Would you have had a conversation with
14 somebody without having a name?

15 A. I don't know. Sometimes I might.

16 Q. And how long is your recollection --
17 How long did that conversation take place?

18 A. Fifteen minutes, maximum.

19 Q. And it took place where?

20 A. In my office.

21 Q. And there were three of you present?

22 A. Yes, sir.

23 Q. No one else?

24 A. No one in the office.

25 Q. And if I was to tell you that one of

1 the persons was a man named Tom Riley, would that
2 help your recollection?

3 A. No, sir.

4 Q. That name doesn't strike you?

5 A. No, sir.

6 Q. Strike a bell?

7 A. No, sir.

8 Q. And if I was to tell you that Mr. Riley
9 met with you, that wouldn't help your memory?

10 A. No, sir.

11 Q. And if I was to tell you that Mr. Riley
12 said he was representing someone who was interested
13 in purchasing the permit that was to be located in
14 your property, that wouldn't refresh your
15 recollection either?

16 A. No, sir. No.

17 Q. Did these persons state their
18 relationship to each other?

19 A. No, sir. Not to my recollection.

20 Q. How long did you say that meeting
21 occurred?

22 A. No more than fifteen minutes.

23 Q. Now, state the substance of what was
24 said during that visit.

25 A. The substance of that conversation

1 dealt with the TV antenna that had been discussed
2 prior or -- when Mr. Daly had called on me earlier
3 the first time.

4 And, as I stated, when they came in the
5 room they explained that they were the owners, new
6 owners to the rights for this TV antenna.

7 And there was some banter back and
8 forth, and the discussion came around to that they
9 would need a dust-free area to house their
10 equipment.

11 And I explained to him at that time,
12 both gentlemen, that that was virtually impossible
13 with our setup, that our plant is not dust-free
14 inside.

15 We purposely, because of environmental
16 reasons, we prefer to keep the dust inside as
17 opposed to outside.

18 There was also a discussion about
19 dust-free and dry area, and that is also a problem
20 due to malfunctions in the plant.

21 We have had malfunctions where the
22 water system has failed, which is on the second
23 deck approximately fifty, sixty feet in the air,
24 and water then runs all over the place.

25 They asked me again if there was -- Was

1 I sure that there was no area that was, you know,
2 dust-free, other than my office and the office
3 area. No.

4 And they said then: Without a
5 dust-free area, they could not place anything
6 there. And that was the end of the conversation.

7 Q. You mentioned a few times, sir, that
8 these persons said they were the new owner of the
9 rights.

10 A. That's the term they used, sir.

11 Q. Did you ask them what they meant by
12 rights?

13 A. No, I did not.

14 Q. Did you know what they meant by rights?

15 A. I made an assumption there that they
16 were talking about the rights that Mr. Daly had
17 talked to me back in '89 or whenever it was.

18 Q. But you never asked them what they
19 meant by rights?

20 A. No, sir. We never got that far. We
21 got to discussing the plant and the dust situation.

22 Q. Did these persons tell you that they
23 were representatives of -- Strike that.

24 Have you ever heard the word: Raystay?

25 A. No, sir. Have I heard it now, yes.

1 But at that time, no, sir.

2 Q. When is the first time you heard the
3 word: Raystay? When Mr. Holt talked to you?

4 A. I would imagine at some point in time
5 when Mr. Holt talked to me or faxed some document.
6 Prior to that I did not know what Raystay was.

7 Q. What is your understanding of what or
8 who Raystay is as we speak?

9 A. As we speak, Raystay is some sort of a
10 communications company that puts up low-power
11 television antennas for stations.

12 Q. Now, did you -- You, obviously, knew
13 that at the time your -- You, obviously, knew about
14 Raystay or heard about Raystay at the time your
15 declaration was prepared and signed by you, is that
16 correct?

17 A. Yes, sir.

18 Q. Because the word, Raystay, is used in
19 your declaration?

20 A. Okay. It was probably discussed with
21 Mr. Holt and I.

22 Q. Satisfy yourself. I don't want you to
23 think I'm trying to trick you here.

24 A. No, I understand.

25 Q. I'm trying to be helpful. Do you want